



**Republic v Were alias Baba Daisy (Criminal Case E017 of 2024)  
[2026] KEHC 3420 (KLR) (13 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3420 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL CASE E017 OF 2024  
WM MUSYOKA, J  
MARCH 13, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**MATHEW WABWIRE WERE ALIAS BABA DAISY ..... ACCUSED**

**JUDGMENT**

1. The accused, Mathew Wabwire Were, faces a charge of murder, contrary to section 203, as read with section 204, of the Penal Code, Cap 63, Laws of Kenya. It is alleged that he killed Jackline Naliaka, hereafter the deceased, on 26<sup>th</sup> November 2024, at Khuluanda Village, Kapina Sub-Location, Nambale Sub-County, Busia. He denied the charges, and the prosecution presented 12 witnesses.
2. PW1, VM , was a grandson of the deceased, a minor at Grade 1. He was near the kitchen, at their compound, where he was assisting the deceased with cooking and service, when he saw the accused emerge and hit the deceased on the head. He saw him flee through a maize farm. He screamed and a crowd gathered. He said that the accused chased him, and he fled into the kitchen, while the accused ran away through the maize. He said that the deceased was holding a lantern lamp, when she was hit. He described how the assailant was dressed. He stated that he knew the accused well, for his home was in the neighbourhood. He said the accused was carrying a metal bar and a rungu, but it was the metal bar that he used to hit the deceased on the head.
3. PW2, GO , was another grandson of the deceased. He stated that on the material day, and time, he was bathing, near the door, when he saw a person emerge from a maize farm, and hit the deceased with a metal bar. He testified that he saw the man well enough, to identify him as the accused. The deceased was holding a lamp, in form of a d-light. He identified the accused as a neighbour. He described the dressing of the assailant, and stated that he had a metal bar and a fimbo. He said that after he attacked the deceased, he also chased after PW1.



4. PW3, John Waswa, was the husband of the deceased. He was seated at an adjacent house when it happened. He heard 3 thuds. He said that the deceased was hit on the head and chest, and fell. The children screamed. He rushed out and saw the deceased lying on the ground, bleeding from head and chest. She died. He screamed, a crowd formed. The children were screaming that the accused, who they called tumbo, had killed the deceased. He described the accused as a maternal nephew. He said that there was a land dispute. He conceded that he did not see the accused attack the deceased, but the children did. He explained the nature of the land dispute.
5. PW4, Chrysantus Makokha Munika, was a brother of the deceased. He identified her body, to the pathologist, for postmortem purposes. PW5, Moses Ayub Were, was a brother of the accused, who operated a kiosk in the vicinity, some 200 metres from the home of the deceased. He saw the accused pass by his kiosk, on his motorcycle, later she heard voices, as if someone was being assaulted. He later heard passers-by say that the deceased had been assaulted and killed. He did not go to the scene of the incident. He said he heard people say that the person who assaulted the deceased was short and plumb, and suggested that that person was the accused. When he heard that he called a Dennis, and asked him to escort the accused to the police. PW6, Paul Okwara Olabula, had been drinking at the same joint with the accused. The deceased left the beer joint at about 7.30 PM, after which PW6 heard screams outside, some 3 or so bomas away. He left for home. The next morning Dennis visited his home, to enquire if he, PW6, had been with the accused the previous evening. Dennis informed him that he had heard that the accused had killed the deceased.
6. PW7, Dr. Ambongi Aaron, conducted autopsy on the body of the deceased. He identified a deep cut behind the left ear. There was a depressed skull, with a linear fracture. There was also subdural haemorrhage. He formed the opinion that the cause of death was the deep injury to the head, due to blunt trauma.
7. PW8, Dennis Musungu Barasa, a relative of the accused, was informed by a customer that the deceased had been killed. It was alleged that the accused had emerged from a maize farm, and hit her. He got together with his brothers, and went to the home of the accused. They found his wife, who informed them that the accused had just arrived home, and she had given him food. They informed the accused of what they were hearing. While they were there, they heard screams, and shouts that the accused had killed, and the accused left his home. The witness was later called by PW7, who advised him to take the accused to the police, and he did so. PW9, Japheth Wabwire Wafula, was a nephew of the deceased. That material evening, he was called to the home of the deceased. He found that she had been killed, and was lying at the door. He attended the postmortem exercise.
8. PW10, No. 215159 Police Corporal Abraham Aboli, arrested the accused, after he was presented to him by PW8, who informed him that the accused was being adversely mentioned, in connection with a murder that had occurred the previous night. PW11, No. 97110, Police Corporal Moses Maina Muraguri, produced photographs, that he had taken at the scene. PW12, No. 53330, Police Corporal Evans Sabisa, was the investigating officer.
9. I put the accused on his defence, in a ruling that I delivered on 29<sup>th</sup> May 2025.
10. The accused testified, on 17<sup>th</sup> September 2025, as DW1. He did not call witnesses. On the material day, he had seen PW3, the husband of the deceased, at a farm, that he wanted to lease out. Later in the evening he went to a bar, and drank alcohol. He left for home at 7.30 PM. He was served a meal, and when he finished, he heard screams from the home of the deceased, where his name was being shouted. He got out of his house, but did not go to the scene, where the screams were coming from. He said he feared, and that he remained outside his house, until 5.00 AM. He went to the police at daybreak.



- He denied meeting the deceased that day, nor having any issues with her. He said that the deceased did not relate well with her co-wives.
11. The accused person, through his Advocate, Mr. Obimba, filed written submissions, which I have read and noted the arguments made.
  12. The offence of murder has 4 elements, which the prosecution is required to prove, to establish it. These are proof of the death, the cause of it, the role of the accused in the causation, and the presence of malice aforethought on the part of the causer or perpetrator.
  13. On proof of the death of the deceased herein, there are the testimonies of PW1, PW2, PW3, PW4 and PW9, all relatives of the deceased, who saw her body, at the scene, and some at postmortem. PW7, the medical officer, performed postmortem, on her body, after it was identified by PW4 and PW9. There is overwhelming evidence, therefore, that the deceased in fact died. On the cause of death, the testimony of PW7, is crucial. He noted a deep cut on the head, a fracture of the skull, and subdural haemorrhage. What caused the death, according to him, was the head injury, due to blunt trauma.
  14. On the causation, the relevant evidence is that of PW1 and PW2, the eyewitnesses. They saw the attack as it happened. They identified the weapons borne by the attacker, and described how he was dressed. They described how the deceased was hit on the head with a metal bar or rod. They also described how the assailant fled from the scene, into a maize farm. They identified the assailant as the accused, who was their neighbour. They said that there was light that aided them to identify the assailant, a lamp or lantern that the deceased was holding. As the 2 witnesses knew the accused, this was not even a case of identification, but recognition.
  15. The accused denied responsibility, saying that at that time he was at his home, which, it emerged, from his statement, was near that of the deceased. He heard the screams, and the mention of his name. The attack, on the deceased, happened at roughly the same time that the accused alleged to have gotten home, and shortly after he left an alcohol joint, and after he was seen by a witness going past his kiosk. The evidence, from the accused, put him in close proximity to the scene of the murder, and the time when it allegedly happened. I am not persuaded, in the circumstances, that that defence displaced the prosecution evidence.
  16. Based on the analysis above, it would be my conclusion that there is adequate material, upon which it can be held that the accused had a role in the causation of the death of the deceased.
  17. On malice aforethought, the same is defined in section 206 of the Penal Code. It is about intention to kill, and knowledge that certain acts could cause death, yet the perpetrator engages in them, regardless. The intention could be direct, where the perpetrator voices or utters or expresses that he was going to kill. It could be indirect, to be implied from the conduct of the perpetrator, which causes or leads to the death.
  18. The sort of injuries, inflicted on the deceased, were no doubt intended to cause her death. It was a direct hit to her head, where the brain is housed, and the chest, where vital organs, such as the heart and lungs, are. The choice of weapon used is also a pointer, to the intention, a metal bar or rod. There was no doubt malice aforethought. It did not take long for the deceased to die of her injury, after the attack, for she died almost instantaneously.
  19. Overall, there is adequate evidence, upon which the accused could be convicted for the murder charged herein. The case, against him, has been established beyond reasonable doubt. Consequently, I hereby convict the accused herein, Mathew Wabwire Were, under section 322 of the Criminal Procedure Code, Cap 75, Laws of Kenya, of the murder of Jackline Naliaka, contrary to sections 203 and 204 of



the Penal Code. The surety is hereby discharged, and any security, deposited, shall be released to the depositor.

20. For the purpose of sentencing, I do hereby direct the County Director of Probation and Aftercare Services to look into the antecedents of the accused, and get the views of the community and of the family of the victim, and thereafter file a pre-sentence report, within 14 days. There shall be a sentencing hearing on 16<sup>th</sup> April 2026. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 13<sup>TH</sup> DAY OF MARCH 2026.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Onanda, instructed by the Office of the Director of Public Prosecutions, for the Republic.

Mr. Rodgers Obimba, instructed by BM Ouma & Company, Advocates for the accused person.

